

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF PENNSYLVANIA**

<b>JOHN CRAIG HAYNES</b>	:	
	:	
<b>Plaintiff</b>	:	<b>CIVIL ACTION NO. 3:18-1837</b>
	:	
<b>v.</b>	:	<b>(MANNION, D.J.)</b>
	:	<b>(SCHWAB, M.J.)</b>
<b>JOHN WETZEL, et al.,</b>	:	
	:	
<b>Defendants</b>	:	

**ORDER**

Presently before the court is the report and recommendation of Magistrate Judge Susan E. Schwab (“Report”), ([Doc. 51](#)), which recommends that the motion to dismiss, ([Doc. 40](#)), filed by the defendants John Wetzel (“Wetzel”) and Lea Martin (“Martin”) be granted and that the plaintiff John Craig Haynes’s (“Haynes”) amended complaint, ([Doc. 34](#)), be dismissed with leave to file a second amended complaint. Despite the Report’s recommendation that he be permitted leave to do so, Haynes filed objections on September 16, 2020, seeking leave to file a second amended complaint. ([Doc. 52](#)).

For those sections of the report and recommendation to which no objection is made, the court should, as a matter of good practice, “satisfy itself that there is no clear error on the face of the record in order to accept

the recommendation.” Fed.R.Civ.P. 72(b) advisory committee notes; see also *Univac Dental Co. v. Dentsply Intern., Inc.*, 702 F.Supp.2d 465, 469 (M.D.Pa. 2010) (citing *Henderson v. Carlson*, 812 F.2d 874, 878 (3d Cir. 1987) (explaining judges should give some review to every report and recommendation)). Nevertheless, whether timely objections are made or not, the district court may accept, not accept, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. 28 U.S.C. §636(b)(1); M.D.Pa. L.R. 72.31.

The motion to dismiss that is the subject of Judge Schwab’s Report was filed by Wetzel and Martin, although, in practical terms, it also pertains to the two John Doe defendants. In his amended complaint, Haynes alleges Eighth Amendment claims against Wetzel, Martin, and the John Does for deliberate indifference to a serious medical need and for conditions of confinement. Having reviewed the filings, this court agrees with Judge Schwab that Haynes’s deliberate indifference claim fails because “Haynes does not plead that the medical care he received was objectively inadequate,” or that “the defendants disregarded any excessive risk to his health or safety.” (Doc. 51, at 24). This court also agrees with Judge Schwab that Haynes’s conditions of confinement claim fails because he has not pleaded facts that can be construed “to show the personal involvement of any defendants in the alleged misconduct,” or “how any condition or

combination of conditions deprived him of a single, identifiable human need . . . or . . . posed a substantial risk of serious harm.” ([Doc. 51](#), at 28-29).

Judge Schwab concludes with a recommendation that Haynes’ complaint be dismissed with leave to file a second amended complaint which includes a “short and plain statement” of the claim pursuant to [Federal Rule of Civil Procedure 8\(a\)\(2\)](#). ([Doc. 51](#), at 29). In his objections, Haynes seeks leave to amend his complaint; however, insofar as the Report recommends that Haynes be granted leave to file a second amended complaint, his objections are moot.

Considering the foregoing, this court agrees with the sound reasoning, which led Judge Schwab to recommend that the motion to dismiss be granted and the amended complaint be dismissed.

**NOW, THEREFORE, IT IS HEREBY ORDERED THAT:**

**(1)** Judge Schwab’s Report, ([Doc. 51](#)), is **ADOPTED IN ITS ENTIRETY**;

**(2)** Haynes’s objections to the Report, ([Doc. 52](#)), are **DISMISSED AS MOOT**;

**(3)** Wetzel and Martin’s motion to dismiss, ([Doc. 40](#)), is **GRANTED** and Haynes’s amended complaint, ([Doc. 34](#)), is **DISMISSED**;

(4) Haynes is **GRANTED** leave to file a second amended complaint on or before **October 30, 2020**; and

(5) The case is **REMANDED** to Judge Schwab for further proceedings.

s/ *Malachy E. Mannion*

**MALACHY E. MANNION**  
**United States District Judge**

**DATE: October 15, 2020**

18-1837-03